be done by the same agents, under the same orders and as part of the same business transaction. If the agents of the company committed a tort in State C would not the two entities be held jointly and severally liable? What is the difference in the nature of the act where the tort is committed in State A or B? The company makes its contracts and operates its road as a single business. It would be contrary to legal principle to say that there are not two distinct legal entities; it would be contrary to common experience to say that these entities do not perform every act of corporate life jointly. The consolidated company incorporated in several states would seem to be a business entity not unlike a partnership. The same result should follow the torts of the company as those of a partnership; not because the company is in fact a partnership but because in contemplation of law they are both single joint undertakings, one of corporations the other of individuals. In the case of a tort in State B, then, the entities would be jointly and severally liable and corporation A could be sued in the federal courts of either State by a citizen of State B. By parity of reasoning contracts made by the company would ordinarily give the two entities joint rights and liabilities and this was suggested in *St. Louis R. R.* v. *I. & St. L. R. R.*, supra. In an action on a contract by a citizen of State A or State B the two corporations would, then, on strict theory have to be joined and there would be no diversity of citizenship on which to ground federal jurisdiction; and so if they joined as plaintiffs.

ACTION FOR ANTICIPATORY BREACH OF CONTRACTS—It was laid down by Lord Campbell that one party to a contract, accepting and acting on the unqualified statement of the other party that he did not intend to perform, might bring an action for a breach, though the time for performance had not arrived. *Hochster* v. *De La Tour* (1852) 2 E. & B. 678; *Avery* v. *Bowden* (1855) 5 E. & B. 714. In England this doctrine of anticipatory breach has not been questioned but the fact that the courts have in nearly every subsequent case invoked some technical objection to avoid its application may be significant. In the United States one year after the enunciation of the rule in England the answer came from Taney, C. J. that "it cannot be maintained either upon principle or authority of the adjudged cases." But after considerable conflict in the Circuit Courts the Supreme Court finally adopted the English rule. *Roehm* v. *Horst* (1900) 178 U. S. 1. Twelve States also have adopted the rule. Three repudiate it. *Daniels* v. *Newton* (1874) 114 Mass. 530. Connecticut in a recent case has joined the majority. *Wells* v. *Hartford Manilla Co.* (Conn. 1903) 55 Atl. 599. Elsewhere the question is still open.

In precedent the doctrine, at the time it was announced, found apparent support in a few cases but was squarely against the weight of authority. *Ford* v. *Tilley* (1827) 6 B. & C. 325; *Philpotts* v. *Evans* (1839) 5 M. & W. 475; *Lovelock* v. *Franklyn* (1846) 8 Q. B.

371. In principle it is objectionable as varying the terms of the contract. B agrees to perform in December. How can he be brought into court in June for failure to do what he had not agreed to do until six months later? Lord Campbell resorts to a theory of a "contractual status" which has been disturbed by the defendant's repudiation. This is in effect reading into the contract a term that if either party repudiates it, such repudiation shall amount to a breach. Then as a limitation on this is the further anomaly that the fact of the promisor's breach is made to depend on conduct of the promisee, that is, on whether he has acted on the repudiation. Nor is this radical departure from principle called for by the exigencies of the situation. Lord Campbell's dilemma was this. If, after the renunciation, the plaintiff did not remain in readiness to perform, he would break the contract himself and lose his right of action against the defendant. If he did remain in readiness the damages would be increased to the needless hardship of the defendant. The immediate right of action would do away with both hardships. But the same result could be reached by much more conservative means. At the time of *Hochster* v. *De La Tour*, supra, Baron Parke had already decided that repudiation as well as failure of performance by one party would excuse the other from remaining in readiness to perform. *Ripley* v. *McClure* (1849) 4 Ex. 345. If then, when the time for performance came, the repudiator still failed to perform, the other party could recover. If he were ready to perform and the other party had not altered his position in reliance on this repudiation, there would be no hardship in letting him do so. If, however, the other party had altered his position in such reliance it would seem that the court would be amply justified in refusing to let the repudiator play fast and loose with his contract by setting up as a defence to an action for the breach his then willingness to perform. On the other hand, there is a grave practical objection to the application of the doctrine of anticipatory breach. Damages assessed before the time for performance are necessarily conjectural. In some classes of contracts they are apt to be wide of the mark. Further, often in the event of a certain contingency all liability under a contract may be discharged. In such a case, a defendant might often be mulcted in damages where, if he had not evinced his mental attitude, he might have escaped liability.

POWER OF THE LEGISLATURE TO REGULATE CRIMINAL CONTEMPTS OF COURT.—In their origin criminal contempts of court seem to have been but one of a class of crimes known as "contempts" and to have been punished by the same procedure as other crimes. Indeed they have never ceased to be indictable at common law. There early grew up, however, a coördinate procedure by which the court itself prosecuted and punished first, contempts committed immediately in its view and later, constructive contempts. But